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IN THE

Supreme Court of the United States

October Term, 1966
No. 119

JOHN MARSHALL,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Petition for Rehearing on Denial of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for Rehearing on Denial of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Pursuant to Rule 58(2) of this Court, petitioner respectfully prays for a rehearing of this Court's order of October 10, 1966 denying his petition for writ of certiorari.

The ground for this petition is that an intervening circumstance of substantial and controlling effect occurred subsequent to the filing, on May 6, 1966, of the petition for writ of certiorari herein. Said circumstance is this Court's decision of June 6, 1966 in *Sheppard v. Maxwell*, 384 U.S. 333.

The Government, in its reply to the petition for writ of certiorari ignored the *Sheppard* case. Petitioner submits that the decision in that case, while built, of course, on previous decisions of this Court, casts an entirely new and different perspective on the concern the courts will and must have when the question as to

a defendant's right to a fair trial in the light of prejudicial newspaper publicity is presented.

One cannot read the record in this case (see, *e.g.* pp. 10-13 of petition for writ of certiorari) and be confident that under the "totality of circumstances" (*Sheppard,* 384 U.S. at 352), petitioner here was afforded the kind of a trial which due process requires or which this Court will demand pursuant to its supervisory power over criminal justice in the federal courts.

Conclusion.

The petition for rehearing and the petition for writ of certiorari should be granted.

Respectfully submitted,

WILLIAM B. BEIRNE,
A. L. WIRIN,
FRED OKRAND,
Attorneys for Petitioner.

Certificate.

I certify that the above petition for rehearing is presented in good faith and not for delay and that it is restricted, pursuant to Rule 58(2) of this Court, to the ground of an intervening circumstance of substantial or controlling effect.

FRED OKRAND